

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

STEVEN J. WILCOX,

Plaintiff,

Case No. 2:20-cv-234

v.

Hon. Hala Y. Jarbou

JOSHUA KALCHERT,

Defendant.

ORDER

This is a diversity action filed by a state prisoner against a former state prisoner who has been released on parole. Plaintiff alleges that Defendant sexually assaulted him on multiple occasions. Defendant has defaulted in this action by not answering the complaint.

On October 26, 2021, the magistrate judge issued a report and recommendation (R&R) recommending that the Court grant Plaintiff's motion for default judgment as to liability and then determine Plaintiff's damages through an evidentiary hearing or through documentary evidence. (R&R, ECF No. 87.) Before the Court are Plaintiff's objections to the R&R (ECF No. 88).

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b)(3).

In his objections, Plaintiff states that he objects to proving damages by way of affidavit. He also asks the Court for a "limited period to conduct discovery . . . to allow medical and psychological evidence." (Pl.'s Objs., ECF No. 88, PageID.363.) The Court notes that Plaintiff filed two motions for discovery regarding damages that were not addressed by the magistrate judge. (See ECF Nos. 53, 86.)

The magistrate judge should address Plaintiff's requests for discovery and conduct the necessary proceedings to determine the damages to which Plaintiff is entitled. Plaintiff does not offer any basis for his objection to deciding the matter by way of documentation rather than a hearing. The magistrate judge should decide in the first instance whether to rely on documentation or to hold a hearing.

Accordingly,

IT IS ORDERED that the R&R (ECF No. 87) is **APPROVED** and **ADOPTED** as the Opinion of the Court, insofar as it recommends granting Plaintiff's request for default judgment as to liability.

IT IS FURTHER ORDERED that Plaintiff's motion for default judgment (ECF No. 58) is **GRANTED**.

IT IS FURTHER ORDERED that the matter of damages is **REFERRED** to the magistrate judge under 28 U.S.C. §§ 636 (b)(1)(B), 636(b)(3); *see Callier v. Gray*, 167 F.3d 977, 983 (6th Cir. 1999) (concluding that a magistrate judge has authority, upon referral, to determine damages after entry of default judgment). The magistrate judge is directed to consider Plaintiff's requests for discovery, to conduct proceedings necessary to determine the amount of damages, if any, to which Plaintiff is entitled, and then to issue proposed findings and recommendations in a report and recommendation.

The Court will enter a default judgment in accordance with this order.

Dated: November 16, 2021

/s/ Hala Y. Jarbou
HALA Y. JARBOU
UNITED STATES DISTRICT JUDGE